THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.1441 OF 2007

DATED: 30-08-2007

BETWEEN

E. Ramu, S/o. E. Sivakumar,
R/o. Palamner Village and
Municipality, Chittoor District
and two others.

...PETITIONERS

AND

The Commissioner of Prohibition and
Excise, Andhra Pradesh, Hyderabad
and others.

...RESPONDENTS

ORDER:

Petitioners question the order of the Prohibition and Excise Superintendent, Chittoor, dated 13.01.2007 in Rc.No.A2/421/2007 in granting A4 shop licence in favour of the fifth respondent to sell Indian Made Foreign Liquor and Foreign Liquor at Ward No.16 of Palamaner Village in respect of the shop at Gazette Sl.No.403 notified at Sadam Village and Mandal for the excise year 2006-2007 i.e. for the period from 13.01.2007 to 30.06.2008 as illegal and arbitrary.

2. The undisputed facts are that the Commissioner of Prohibition and Excise, Andhra Pradesh, Hyderabad, in exercise of powers under Rule 4 of the Andhra Pradesh Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short 'the Shop Rules') fixed 458 shops in Chittoor District vide proceedings dated 27.05.2006 for the excise year 2006-2007 commencing from 01.07.2006 to 30.06.2008. Pursuant to

the said fixation of the number of shops,
the District Collector/Auctioning Authority issued notice duly publishing the Gazette dated 25.07.2006 inviting tenders from the intending bidders. The said gazette notification contained particulars as required under Rule 5 of the Shop Rules. Ten shops were notified in Palamaner Municipality and the writ petitioners became the successful tenderers for the leasehold rights of the A4 shops notified at gazette Sl.Nos.102, 103 and 105 situated at Palamaner Municipality. The shop at Sl.No.403 was notified at Sadam Village and Mandal and the as the same could not be disposed of, the auctioning authority after obtaining necessary approval from the Commissioner, Prohibition and Excise, issued a notification No.106/2006 dated 31.07.2006 relocating the shop No.4 of Sadam Village and Mandal notified at Gazette Sl.no.403 to Ward No.10 of Palamaner Municipality.

Aggrieved by the said action of the official respondents in proposing to conduct auction in respect of shop at Sl.No.403 notified at Sadam village relocating to Ward No.10 of Palamaner Municipality, the petitioners filed WP.No.16492 of 2006 and this Court while admitting the writ petition granted interim stay of all further proceedings pursuant to the notification No.106/2006 dated 31.07.2006 by order dated 07.08.2006. On a vacate stay petition filed by the Government, the order dated 07.08.2006 was modified by order dated 24.08.2006 restricting the interim stay of proceedings under the impugned notification dated 31.07.2006, only to the shop situated at Palamaner Village and Municipality. Therefore, even as per the modified order dated 24.08.2006 the said shop at Gazette Sl.No.403 of Sadam village cannot be auctioned by relocating it to Palamaner Village and Municipality. W.P.No.16492 of 2006 was allowed by order dated 13.04.2007 following the earlier judgment of this Court in W.P.No.215 of 2007 dated 01.03.2007 which was upheld by the Division Bench judgment of this court in W.A.No.217 of 2007 dated 01.05.2007.

3. Learned counsel for the petitioners submits that once the number of

shops have been fixed and Gazette notification has been issued proposing to auction 10 shops alone at Palamaner Municipality, it is not open either for the Commissioner of Prohibition and Excise or for the auctioning authority to increase the number of shops. Therefore, the action of the respondents in relocating the shop situated at Sadam Village and Mandal and notified at Gazette Sl.No.403 either to Ward No.10 or Ward No.16 of Palamner Municipality is illegal, arbitrary and unsustainable.

4. On the other hand, Sri Gangaiah Naidu, learned counsel appearing for the fifth respondent submits that, admittedly the Commissioner fixed 458 shops in the Chittoor District for auction but only 446 shops were disposed of by way of public auction and
12 shops could not be disposed for various reasons, therefore, the said 12 shops have been re-fixed for issuance of licence by the competent authority. Initially A4 shop of Sadam village notified at Gazette Sl.No.403 was relocated to Ward No.10 of Palamner Municipality,
but pursuant to the interim orders of this Court in WP.No.16492 of 2006 the said shop was again relocated to Ward No.16 of Palamaner Municipality. Pursuant to re-fixation of the said shop, the same was notified vide Gazette notification dated 16.12.2006 and in the auction held on 13.01.2007 the fifth respondent became the highest bidder and licence was granted from 13.01.2007 to 30.06.2008. Thus, it is stated that the order in WP.No.16492 of 2006 has no relevance when the shop has been relocated at Ward No.16 of Palamaner Municipality, therefore, there is no illegality on the part of the official respondents in auctioning and granting A4 shop licence in respect of the shop at Gazette Sl.No.403 situated at Sadam Village relocated to Ward No.16 of Palamner Municipality.

5. Learned Government Pleader appearing for the official respondents submits that the shop notified at Gazette Sl.No.403 situated at Sadam village was originally relocated to Ward No.10 of Palamaner Municipality but pursuant to the interim order of this Court in WP.No.16492 of 2006, a report

was submitted to the Commissioner and permission was obtained for shifting the shop to Ward No.16 of Palamaner Municipality and accordingly licence was issued under
Rule 26 of the Shop Rules by the licensing authority after complying all the formalities.

6. It is not in dispute that the notification No.106/2006 dated 31.07.2006 for relocation of shop at Gazette Sl.No.403 situated at Sadam Village was questioned by the petitioners by filing WP.No.16492 of 2006 and this Court allowed the said writ petition following the judgment of this Court in WP.No.215 of 2007 dated 01.03.2007 which was upheld by a Division Bench judgment of this Court in WA.No.217 of 2007 dated 01.05.2007. A perusal of the judgment of the Division Bench goes to show that as per the scheme of the Shop Rules, the Commissioner is empowered to fix the number of shops to be established in an area/locality having regard to the parameters indicated in Rule 4 of the Shop rules. Once the auction notice is issued fixing the number of shops, it is not open for the Commissioner or the auctioning authority to shift the shops except permitting the APBCL to open outlets for sale of the liquor in respect of undisposed shops or permit the licencee to shift the shop subject to the requirement of Rule 29(3) of the Shop Rules. But under Rule 4 of the Shop Rules neither the Commissioner nor the auctioning authority is empowered to shift the area/location of the shop for which no bid is given in the auction. Therefore, I am of the opinion that the issues raised in this writ petition is squarely covered by the Division Bench judgment of this Court in WA.No.271 of 2007 dated 01.05.2007 and accordingly the writ petition is liable to be allowed.

7. However, the other questions with regard to the grant of remission in favour of the petitioners and the refund of the bid amount of the licence fee in favour of the fifth respondent are kept open to them to work out their remedies in accordance with law. If the fifth respondent wants to continue his

business in respect of the shop notified at Gazette Sl.No.403 situated at Sadam Village, it is open for the respondents to consider his case.

In view of the aforesaid facts and circumstances of the case, the writ petition is accordingly allowed as prayed for. There shall be no order as to costs.

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V. ESWARAIAH, J

August 30, 2007
DSK